

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Spanish Fort Post Office
Spanish Fort, AL

Docket No. A2021-1

PUBLIC REPRESENTATIVE RESPONSE TO
POSTAL SERVICE MOTION TO DISMISS

(January 19, 2021)

On December 28, 2020, the City of Spanish Fort, Alabama (Petitioner) appealed the Postal Service's determination to close the Spanish Fort community post office (CPO) located in Spanish Fort, Alabama 36527.¹ The Petitioner concurrently filed a Participant Statement and an application to suspend the closing pending resolution of this appeal.² Order No. 5793 established this docket to consider the appeal, set forth a procedural schedule, and designate the undersigned Public Representative.³ On January 7, 2021, the Postal Service filed a motion to dismiss the proceedings.⁴ The Public Representative submits this response to the Motion to Dismiss.

The Postal Service makes three main arguments. First, it asserts that the Commission lacks jurisdiction to consider the appeal because its authority under 39 U.S.C. § 404(d) does not apply to contractor-operated retail facilities such as the Spanish Fort CPO.⁵ Second, it contends that the Commission lacks jurisdiction to consider the appeal because

¹ In the Matter of Spanish Fort, Alabama 36527 / Appeal of Postal Service Determination to Close Spanish Fort Post Office, December 28, 2020.

² Participant Statement, December 28, 2020 (Participant Statement); Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office, December 28, 2020.

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 29, 2020 (Order No. 5793).

⁴ United States Postal Service Motion to Dismiss Proceedings, January 7, 2021 (Motion to Dismiss)

⁵ Motion to Dismiss at 5-8. CPOs are retail outlets for postal products and services that are located within existing communities, such as convenience stores and local businesses, and are operated by the management of those locations. *Id.* at 7.

the Spanish Fort CPO is not the “sole source” of postal services to the affected community. *Id.* at 8-12. Third, the Postal Service describes policy reasons that support its position that the Commission lacks jurisdiction over the appeal. *Id.* at 13-14.

I. DISCUSSION

As discussed below, the Commission has jurisdiction over this appeal because the Spanish Fort CPO is the “sole source” of postal services to the Spanish Fort community. The Postal Service should reconsider its decision to close the Spanish Fort CPO because of concerns expressed about the contract bidding process. Keeping the Spanish Fort CPO open during the pandemic would further the public interest and promote postal policy and public safety. For these reasons, the Public Representative recommends that the Commission deny the Motion to Dismiss and consider this appeal.

A. THE COMMISSION HAS JURISDICTION BECAUSE THE SPANISH FORT CPO IS THE “SOLE SOURCE” OF POSTAL SERVICES TO THE COMMUNITY

The Commission has consistently used the “sole source” framework to determine its jurisdiction to hear appeals of Postal Service decisions to close or consolidate contractor-operated retail facilities such as CPOs and contract postal units (CPUs).⁶ In *Knob Fork*, the Postal Rate Commission held that the post office discontinuance requirements of 39 U.S.C. § 404(d) apply to CPOs that are the sole retail postal facility serving the community.⁷ The Commission reiterated in the *Green Mountain* post office closing appeal that the requirements of section 404(d) apply to CPOs “when they are the sole source of postal services to a community.”⁸ In *Careywood*, the Commission clarified that, “[t]he sole source standard is not simply whether a facility is the only postal retail service facility located in a

⁶ A CPU is a contractor-operated retail facility located in a store or place of business that accepts mail from the public, sells postage and supplies, and provides selected postal services. A CPO is a CPU that provides service in a community where a post office has been discontinued. United States Postal Service, *Publication 32 - Glossary of Postal Terms*, July 2013.

⁷ Docket No. A83-30, *In re Knob Fork, West Virginia 26579*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404(b)(5), January 18, 1984, at 8 (*Knob Fork*).

⁸ Docket No. A94-9, *In re Green Mountain, Iowa 50637*, Commission Opinion Affirming Decision under 39 U.S.C. § 404(b), August 16, 1994, at 5 (*Green Mountain*).

community. The standard is whether that retail facility is the sole provider of services to a community.”⁹

The Commission has applied the “sole source” framework in three post office closing appeals involving the closure of a CPO or CPU serving a community: *Alplaus*, *Careywood*, and *Rio Nido*.¹⁰ In these cases, the Commission evaluated whether the post office was the sole source of postal services to the affected community by considering factors such as the distance and driving time to nearby post offices, access to postal services provided by usps.com, eligibility for rural carrier service, and the availability of retail businesses and other alternate access options.¹¹ Although the Commission found that these post offices were not the sole source of postal services to their respective communities, there are several factors that distinguish the Spanish Fort CPO from these post offices.

First, the Daphne post office is not a viable alternate source of postal services to the Spanish Fort community. The Postal Service states that “[c]ustomers of the Spanish Fort CPO will be served by the Daphne Post Office, which is located 4.8 miles from the Spanish Fort CPO.” Motion to Dismiss at 12. However, this distance was measured “as the crow flies” and does not consider factors that would extend the distance and driving time, such as traffic conditions and the location of highway and access roads. Some residents would have to drive 15 miles to access the Daphne post office depending on traffic conditions and accidents that routinely divert traffic through the main thoroughfares in Spanish Fort and Daphne.¹² A round trip to the Daphne post office could take anywhere from 30 minutes to an hour. *Id.* Thus, the Daphne post office should not be considered a viable alternate source of postal services to the Spanish Fort community, especially for the city’s growing senior citizen population and others who have difficulty traveling.

⁹ Docket No. A2015-2, Order Dismissing Appeal, May 27, 2015, at 12 (Order No. 2505).

¹⁰ Docket No. A2012-88, Order Dismissing Appeal, March 21, 2012 (Order No. 1293); Order No. 2505; Docket No. A2017-2, Order Affirming Determination, September 1, 2017 (Order No. 4088).

¹¹ See Order No. 1293 at 6; Order No. 2505 at 12-13; Order No. 4088 at 10-11.

¹² Motion to Compel and Supplement to Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office, January 14, 2021, at 5 (Motion to Compel).

Second, alternate sources such as usps.com, rural carrier service, and retail businesses would not provide Spanish Fort residents sufficient access to postal services. The Postal Service states that customers of the Spanish Fort CPO will remain eligible for rural carrier service and will have access to postal services provided by usps.com and retail businesses in the area. Motion to Dismiss at 12. However, many Spanish Fort residents are senior citizens without access to the Internet or a computer and cannot access postal services via usps.com. The Postal Service states that there are 17 retail businesses that sell stamps “located within 10 miles of the 36527 ZIP Code.” *Id.* at 5. As previously discussed, this distance could be further away for some residents based on traffic conditions and access to highways. Also, the Spanish Fort CPO offers products and services that rural carriers and retail businesses do not, such as post office boxes, which provide a secure location to pick up mail and packages. Spanish Fort residents would be adversely affected by the diminished access to postal services.

Third, the Spanish Fort CPO differs from other post offices that the Postal Service has closed because it is a growing community. The Alplaus, Carewood, and Rio Nido post offices were located in small communities with no more than 1,000 residents.¹³ By contrast, approximately 10,000 people reside in the Spanish Fort community, which has experienced more than 30 percent population growth between 2010 and 2018 and is projected to be the largest city in Baldwin County by 2035.¹⁴ The Spanish Fort community should have its own post office because the city will continue to grow and thrive. Spanish Fort is a separate and distinct community from Daphne, Alabama, and the Spanish Fort CPO is the only post office located within the Spanish Fort corporate limits. Motion to Compel at 2. The Daphne post

¹³ See Docket No. A2012-88, Motion in Opposition to the USPS Motion to Dismiss, December 21, 2011, at 1; Docket No. A2015-2, Public Representative's Opposition to the Postal Service's Motion to Dismiss, April 3, 2015, at 1; Docket No. A2017-2, Appeal of Final Determination Re: Closure of Rio Nido, California Post Office, June 29, 2017, at 3.

¹⁴ Motion to Compel at 4; Letter from Richard Shelby, Chairman, Senate Committee on Appropriations, to Robert G. Taub, Chairman, Postal Regulatory Commission, January 12, 2021, at 1 (Chairman Shelby Letter); Letter from Tommy Tuberville, United States Senate, to Robert G. Taub, Chairman, Postal Regulatory Commission, January 13, 2021, at 1 (Senator Tuberville Letter).

office has limited capacity and may not be able to accommodate the 570 post office boxes from the Spanish Fort CPO.¹⁵

For the reasons describe above, the Commission has jurisdiction over this appeal because the Spanish Fort CPO is the “sole source” of postal services to the Spanish Fort community.

B. THE POSTAL SERVICE SHOULD RECONSIDER ITS DECISION TO CLOSE BECAUSE OF CONCERNS ABOUT THE CONTRACT BIDDING PROCESS

The Postal Service asserts that when it solicited contractual bids for the Spanish Fort CPO, it received a single bid that “fell outside the parameters of the Postal Service’s acceptable compensation model.” Motion to Dismiss at 4. However, both the Petitioner and members of Congress have expressed concerns about the bidding process and decision to close the Spanish Fort CPO.¹⁶ Senate Chairman Richard Shelby writes that “several members of the community, including local elected officials, have expressed frustration with [the Postal Service] and the process that took place during the negotiations to extend the contract or renew the CPU contract in Spanish Fort.”¹⁷ He states that “certain options were not considered or evaluated, and that, at a minimum, some level of ambiguity existed in discussions or, at worst, misinformation was shared.” *Id.*

Similarly, Senator Tommy Tuberville states that “representatives of Spanish Fort, including community members and elected officials, have expressed concern with how the process surrounding the decision to close the [Spanish Fort] CPU was handled.”¹⁸ He also notes a lack of transparency from the Postal Service during discussions with elected officials. *Id.* Representative Jerry Carl also describes an “irregular” process and lack of communication regarding the provision of post office boxes.¹⁹ Chairman Shelby, Senator

¹⁵ See Chairman Shelby Letter at 1; Motion to Dismiss at 3.

¹⁶ See Participant Statement at 4

¹⁷ Chairman Shelby Letter at 1.

¹⁸ Senator Tuberville Letter at 1.

¹⁹ Letter from Jerry L. Carl, House of Representatives, to Robert G. Taub, Chairman, Postal Regulatory Commission, January 11, 2021, at 1-2.

Tuberville, and the Petitioner note that the current contract operator of the Spanish Fort CPO had agreed to extend the existing contract with the same terms and conditions to allow for further negotiations and continued discussions on renewing the contract.²⁰

Based on the concerns expressed by the Petitioner and several members of Congress, the Public Representative recommends that the Postal Service reconsider its decision to close the Spanish Fort CPO and reopen the bidding process. The city of Spanish Fort and the contractors have worked in good faith with the Postal Service to reach a mutually agreeable bid and are willing to discuss various alternatives.²¹ Given the interest from several members of Congress and the concerns expressed about the transparency and clarity of the bidding process, the Postal Service should work with the city of Spanish Fort and contractors to make a good faith attempt to negotiate a bid that falls within its “acceptable compensation model.” Although the Commission does not generally have authority over the Postal Service’s contractual decisions, it does have the authority to return the entire matter related to a post office closing to the Postal Service for further consideration. See 39 U.S.C. § 404(d)(5).

C. KEEPING THE SPANISH FORT CPO OPEN DURING THE PANDEMIC WOULD FURTHER THE PUBLIC INTEREST AND PROMOTE POSTAL POLICY AND PUBLIC SAFETY

The Postal Service’s basic functions are “to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people [and] provide prompt, reliable, and efficient services to patrons in all areas and ... render postal services to all communities.” 39 U.S.C. § 101(a). Binding the nation together is especially important during the pandemic, which has limited in person communication. Post offices are a safe and important way for people to communicate during the pandemic, especially for Spanish Fort residents who are senior citizens or lack access to the Internet or a computer. Closing the Spanish Fort CPO would present a significant hardship for senior citizens and residents who cannot travel long distances to reach the nearest post office. By

²⁰ Chairman Shelby Letter at 1; Senator Tuberville Letter at 1; Motion to Compel at 5.

²¹ See Senator Tuberville Letter at 1.

contrast, keeping the Spanish Fort CPO open would further the public interest and promote postal policy by providing “a maximum degree of effective and regular postal services” to rural areas and communities. See *id.* § 101(b). It would also help the Postal Service carry out its general duties by providing Spanish Fort residents with “adequate and efficient postal services” and ensuring they have “ready access to essential postal services.” See *id.* § 403.

The Public Representative observes that closing the Spanish Fort CPO would drive customer traffic to other post offices, which may cause overcrowding at the Daphne and other local post offices. Keeping the Spanish Fort CPO open would also promote public health and safety by preventing crowds at other post offices and maintaining social distancing requirements.

For these reasons, the Public Representative recommends that the Commission deny the Motion to Dismiss and consider the Spanish Fort post office closing appeal.

Respectfully submitted,

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